

**Site Address: Allotment Gardens west of
Roebuck Inn and south east of the
Blinking Owl PH, Banbury Road, North
Newington**

14/01816/F

Ward: Sibford

District Councillor: George Reynolds

Case Officer: Rebekah Morgan

Recommendation: Refusal

Applicant: Penfield Homes Ltd (Mr Christopher McNally)

Application Description: Erection of 1 no. detached dwelling and detached garage

Committee Referral: Member
Request – Cllr Reynolds

Committee Date: 3 September 2015

1. Site Description and Proposed Development

1.1 The application site is a parcel of mainly agricultural land located within North Newington. There is a small, single storey building on the site that benefits from an industrial use (see planning history) however, the remainder of the land is still considered to be an agricultural use. A stone boundary wall runs along the boundary of the site adjacent to the Banbury Road and vehicular access is proposed via The Pound.

1.2 The application site is within the North Newington Conservation Area and there are Grade II listed buildings within the vicinity of the site.

1.3 The application seeks consent for an 'L' shaped, two storey, 3 bedroom detached dwelling and detached garage/outbuilding to be positioned on the southern side of the site.

1.4 The application was reported to Planning Committee on the 11th June 2015 where Members resolved to grant planning permission subject to granny planning permission subject to:

- a) *Officers being satisfied there is a lawful vehicular access to the proposed dwelling; and*
- b) *Conditions.*

1.5 The applicant has been unable to demonstrate to the satisfaction of your officers that there is lawful vehicular access to the serve the proposed dwelling and in accordance with the resolution on 11 June the application is being reported back to the Planning Committee.

2. Application Publicity

2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment is the 11th June 2015.

12 letters have been received. The following issues were raised:

- Planning statement incorrectly states that villagers don't want land to be used for agriculture
- The Pound has not always provided access to the site
- Vehicle movements along The Pound will not be reduced following the development
- The Pound is not suitable for construction vehicles

- Concerns that a future occupier could arrange for The Pound to be re-surfaced causing drainage issues
- Could set a precedent for further houses requiring access off The Pound
- Access is dangerous/inadequate
- Drainage
- Property within a Conservation Area
- Increased traffic will damage The Pound surface
- Banbury Road is already a busy road through the village
- Access crosses a footpath
- Impact on street scene
- Impact on neighbours view
- Potential overlooking
- Impact on Conservation Area

3. Consultations

3.1 North Newington Parish Council: The Parish Council submitted the following comments.

14/01816/F Application from agricultural to Business Use

We object to the above application on the following basis:

- There is not a business premises on the land, as there is no permanent building structure. It is our understanding that a corrugated shed is not a permanent structure and should not be classed as one.
- There is no business use on the land that has been noted by the Parish Council or by the neighbours. It is our understanding that before a conversion to business use the premises need to be in use for the purpose for a period of time. This has not been the case.
- The land does not have a right of access via the Pound as has been stated in the application.
- On the application map the Brick storage shelter to the left of the workshop does not belong to the applicant and should not be included as part of the application.

If however, the land meets the criteria for the change of use from agricultural to business use, the Parish Council also has the following comments to make regarding application **14/01758/POA**

- Right of access. The land has no right of access via The Pound. The gated area was knocked through by the applicant and is where none existed before.
- The application shows that the lane is part of the property, but this is not the case.
- The street scene of the application is disproportionate and is not an accurate representation of the land levels.
- We have concerns regarding the ridge height levels. We have also expressed concerns regarding other applications on ridge height, especially with the application overlooking so many properties so that it will be very imposing for current residents.

We also believe the planning design and access statement contains many inaccurate statements which are misleading.

1.2 states the village have been adamant that the land be used for agricultural use. This has not been the case, the animals were placed there after the applicant did not get planning permission. The land has always been an open garden and was enclosed by a stone wall all the way around.

1.3 The agricultural building described is a temporary structure made from corrugated iron. The small brick building does not belong to the land. There has been no redevelopment of the building.

3.1 The statement regarding the agricultural user and business user is misleading. There are both different sides of the same coin, one being Mr McNally and the other being Penfield Homes Ltd. This company is under the ownership of Mr McNally. Also the vehicle number do not show any basis for comparison.

3.2 The existing vehicular access is not entitled to be there. There was no vehicle right of way onto the land until the applicant knocked down a wall to allow access. According to OCC the Pound is listed as having pedestrian use only. There is a given that access is to the properties that are already built and therefore for access only. Larger vehicles do struggle to enter and exit the Pound due to the narrow nature so to state that lorries regularly enter with no problems is misleading.

The Parish Council would like to respectfully request that before any decisions are made, that the full historic application details be read in full. We would like the decision process to only be taken when all the information is available. We also feel that this application should go before the full committee, not be made by a planning officer.

Cherwell District Council Consultees

3.2 Conservation Officer: The scheme has been modified that it is now considered that the siting of the proposed dwelling and the proposed access no longer contribute significant harm to the character and appearance of the conservation area. Recommended conditions.

3.3 Ecology Officer: The piece of land involved in the proposals has some potential to support reptiles on an occasional basis which are protected from killing and injury under the Wildlife and Countryside Act 1981. I do not think a survey is necessary but should permission be granted we should include a condition designed to minimise risk of harm. In addition there is said to be building(s) on site – do you know what these consist of and what type of roofing they have? I cannot see these details in the application documents. I do not imagine that bat usage is likely to be an issue as there is some mention of corrugated iron but just to check given local records. In addition in line with guidance in the NPPF for biodiversity gain it would be beneficial in this location if the plans included some measures for bat roosting opportunities within any new dwelling. These could take the form of bat bricks or tubes within the building or a couple of raised ridge tiles or bat tiles etc..

3.4 Environmental Protection Officer: No comments received

Oxfordshire County Council Consultees

3.5 Highways Liaison Officer: No objections subject to conditions

3.6 Archaeologist: There are no archaeological constraints to this scheme.

3.7 Rights of Way Officer: I am emailing with reference to the above planning application. A public footpath runs along the western boundary of the site (North Newington Public Footpath 11) and another public footpath runs along The Pound (North Newington Public Footpath 18). These public rights of way are not mentioned in the application despite the applicant showing The Pound (footpath 18) as providing the access into the site.

Public Footpath 18 runs over The Pound and provides a right of way for the public on foot only. Anyone driving over The Pound will be exercising a private vehicular right. I understand that access to the site was originally via a narrow gateway, only wide

enough for pedestrians and it is therefore questionable as to whether a vehicular right over The Pound exists. If a private vehicular right does not exist, driving over the footpath with a vehicle would be unlawful.

The Pound is approximately 135m in length. The majority of the track has a relatively hard surface apart from a 30m section closest to the site which is currently grass. The route is particularly narrow and steep over the western section from Main Street and there is a blind bend so you are not able to see whether a vehicle is already on The Pound when entering or exiting. There are no places to pass on this section and any vehicles meeting each other would need to reverse. Any increase in traffic along The Pound is therefore of concern particularly as this is a well-used public footpath.

I am a little confused about the vehicle movements that are described in the Design and Access Statement. Under 4.4 Parking and Highway Safety it states that *'approval of the proposal will lead to a substantial reduction in vehicular movements both on and off site, and would be an obvious enhancement in road safety'*. There is currently limited damage to the grassed section of The Pound which suggests that the current vehicular movements are infrequent. Approval of the proposal is therefore likely to increase the traffic rather than reduce it and this would have a negative impact on the route.

If the decision is made to grant planning permission the grassed section of The Pound would need to be surfaced to make it suitable for vehicles. It is important that any work to the surface is in keeping with the surrounding area and we would not want to see this surfaced with tarmac. The Applicant would need to agree any proposals to alter the surface of The Pound with the Highway Authority (in this case the Countryside Access Team) and with the Landowner/s.

If permission is granted it is suggested that conditions are applied in order to protect the public footpath.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Cherwell Local Plan 2011-2031 Part 1:

Villages 1:	Village Categorisation
ESD 15:	The Character of the built and historic environment

The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015.

The Plan was the subject of an independent examination conducted by an Inspector appointed by the Secretary of State. The Inspector's report was published on 12th June 2015 and the recommended main modifications required to make the Plan sound have been included in the adopted plan.

The Plan provides the strategic planning policy framework and sets out strategic site allocations for the District to 2031. Now adopted, the Plan forms part of the statutory development plan and provides the basis for decisions on land use planning affecting Cherwell District.

The Local Plan 2011-2031 – Part 1 replaces a number of the saved policies of the 1996 adopted Cherwell Local Plan. Those saved policies of the 1996 adopted Cherwell Local Plan which are retained remain part of the development plan. These are set out in Appendix 7 of the Local Plan 2011-2031.

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

The Local Plan and its associated documents are available on the Council's website: www.cherwell.gov.uk

Cherwell Local Plan 1996 (Saved Policies)

- C28: Layout, design and external appearance of new development
- C30: Design of new residential development

4.2 Other Material Policy and Guidance

National Planning Policy Framework

National Planning Practice Guidance

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant planning history
- Principle of the development
- Visual amenity and impact on heritage assets
- Neighbouring amenity
- Highway safety
- Impact on public right of way

Relevant Planning History

5.2 **01/02095/OUT:** Erection of 1 no. dwelling and new vehicular and pedestrian access (Outline). Application withdrawn.

5.3 **02/01103/OUT:** Erection of 1 no. dwelling and new vehicular and pedestrian access (Outline). Application refused.

5.4 The above application was refused for the following reasons:

- 1) The proposed development would be contrary to Policy G2 of the Oxfordshire Structure Plan and Policies H14, C22 and C30 of the adopted Cherwell Local Plan. The development of this site for one dwelling does not constitute infill development and by virtue of the loss of this elevated and open land, which is prominent in the street scene and Conservation Area, and the likely character and appearance of any dwelling, including the significant reduction in site levels, would result in development which is unsympathetic and detrimental to the character and appearance of the site and the street scene in general and would neither preserve nor enhance the character and appearance of the Conservation Area.
- 2) The unjustified loss of the front boundary wall from its original position in order to provide access to the site would be contrary to Policy C23 of the Cherwell Local Plan and would neither preserve or enhance the character and appearance of the Conservation Area.
- 3) The proposed access would be contrary to Policy T18 of the Oxfordshire Structure Plan and Policies TR2 and TR5 of the Cherwell Local Plan as it is sub-standard in terms of visibility and the traffic generated by the proposal would result in a hazard and be detrimental to the safety of other road users.

5.5 **14/01758/PAO:** Change of Use from agricultural to B8 business use. Prior approval not required.

5.6 The above notification was submitted under the new permitted changes of use in The Town and Country Planning (General Permitted Development) (England) Order 2013 (as amended). As the building was less than 150 sqm in size, the applicant was only required to notify the council of their intent to implement a permitted change of use.

Principle of the development

5.7 *Changes in policy and housing land supply*

When the application was reported to Planning Committee on the 11th June 2015 Members resolved that the principle of residential development was acceptable. However, there has been a material change in circumstance since the June Planning Committee in that on the 20th July 2015 Cherwell District Council formally adopted the Cherwell Local Plan 2011-2031. As a result a number of policies in the Cherwell Local Plan have been replaced, however some key policies have been retained. The current development plan policy is set out below:

5.8 The Council can demonstrate a 5.1 year housing land supply as set out in the Annual Monitoring Report 2014 (march 2015).

5.9 *Principle of new dwellings within North Newington*

The application is for a new dwelling within North Newington which is classified as a Category C village within the Cherwell Local Plan 2011-2031 and Category C. Policy Villages 1 of the Cherwell Local Plan 2011-2031 restricts new residential development to:

- Infilling
- Conversions

5.10 The Cherwell Local Plan 2011-2031 states '*Policy Villages 1 allows for the most sustainable villages to accommodate 'minor development' and all villages to accommodate infilling or conversions. The appropriate form of development will vary depending on the character of the village and development in the immediate locality. In all cases, Policy ESD 15: The Character of the Built and Historic Environment will be applied in considering applications*'.

5.11 The proposal is for a new build property therefore it is not a conversion. The site is agricultural in nature with only a small building to one side; although this building has a permitted industrial use (see planning history) Overall the land is in a good state.

5.12 The Cherwell Local Plan 2011-2031 states 'Infilling/refilling refers to the development of a small gap in an otherwise continuous built-up frontage' (Para C.264). The application site does represent a gap within the village however, it is noted that the built form is different on either side of the site. The existing gap along the road frontage is approximately 75m wide, although it is noted that the applicant does not own all of the land forming the gap.

5.13 Although, the proposal does not wholly comply with the definition of infilling due to the size of the gap, it does respect the linear development along the Banbury Road with the new dwelling proposed to be located adjacent to an existing dwelling. Therefore, your officers consider that it would be difficult to defend a reason for refusal at appeal based on non-compliance with the Council's definition of infilling.

5.14 When deciding if a 'gap' is suitable for new development, consideration must also be given to the development form and the importance of the 'gap' within the village.

- 5.15 The sub text of policy ESD 15 of the Cherwell Local Plan 2011-2031 states that new development proposals should 'Respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to intergrade within existing streets and public spaces, and buildings configured to create clearly defined active public frontages'. In paragraph B.271 it goes on to say 'Our rural areas will need to accommodate new development which reinforces the locally distinctive character by being sensitive in its location, scale, materials and design, reflecting the traditional pattern of development within the street settlement, balancing making best use of land with respect for established character and respecting open features that make a positive contribution. A large proportion of rural settlements fall within conservation areas, where the quality and special interest of the area is protected'.
- 5.16 The planning history highlights the importance of this site as a gap within the village that should be preserved, however, this does not rule out any development on the site, provided the important 'gap' is preserved and any development respects the character and appearance of the Conservation Area.
- 5.17 The current proposal is for a dwelling to be located towards the southeast corner of the site adjacent to the neighbouring property Stonecroft. The redline area has been amended during the course of the application to restrict the proposed residential area for the property and to deliberately exclude a large portion of the site that fronts the Banbury Road. This will ensure that any future occupier is unable to use the land at the front of the site for domestic purposes and prevent the erection of ancillary domestic buildings on that parcel of land. The amendment to the redline will help to ensure the open character and feel of the village is retained in this location. This successfully 'balances making best use of land with respect for established character and respecting open features that make a positive contribution' in accordance with policy ESD15 of the Cherwell Local Plan 2011-2031.
- 5.18 Therefore, your officers consider that in principle a well-designed dwelling could be accommodated on the site while protecting the historic settlement pattern of the village and the character of the Conservation Area in accordance with policies Villages1 and ESD15 of the Cherwell Local Plan 2011-2031
- 5.19 *Vehicular access to the site*
- The proposed vehicular access to the dwelling would utilise what appears to be an existing access along The Pound.
- 5.20 Although the Local Highway Authority has raised no objections to the proposal, this is on the assumption that access can be gained via the proposed route along The Pound.
- 5.20 The ownership of The Pound is unclear (it is relatively common for small strips of land in villages such as this not to have a registered owner) therefore the applicant has served the relevant notices required for the application to proceed.
- 5.21 A public Right of Way runs along The Pound and another crosses adjacent to the site entrance. Comments from Oxfordshire County Council's Rights of Way Officer and the neighbours have questioned if the applicant has a legal right of vehicular access to the site via The Pound.
- 5.22 Driving a vehicle across a public Right of Way is an offence under the Road Traffic Act 1988 if the person does not have a private vehicular right to use the route or doesn't have lawful authority to do so. If this is the case, the police could choose to prosecute an individual therefore preventing them from using the access and in turn, preventing the required parking and manoeuvring areas to be provided for the

dwelling. This is a material planning consideration in that planning permission could be granted for a dwelling without the benefit of adequate vehicular access and associated of street parking, resulting in highway safety issues as a result of this displaced parking.

- 5.23 Members resolved to grant planning permission at the 11th June Planning Committee subject to officers being satisfied that there is a lawful vehicular access to the proposed dwelling.
- 5.24 Rights of vehicular access are commonly shown on deeds or can be gained through what is referred to as a prescriptive use. A prescriptive use is where lawful access is gained via long term use of the access. In the case of an access across a public Right of Way a period of 20 years or more would constitute a long term use.
- 5.25 To date, the applicant has not provided convincing evidence that a lawful right of vehicular access exists along The Pound. Documents submitted raise the issue that access can be gained through long term use, however it does not explicitly state that this is being claimed in this case. Furthermore, the applicant has failed to provide any evidence to show how long the vehicular access along The Pound has been in use. Neighbour comments made on application 02/01103/OUT suggest that the vehicular access was created in April 2001. If this were the case, the applicant would not be able to claim that a prescriptive access exists.
- 5.26 Without a lawful vehicular access to the site, it is likely that the development would result in vehicles being displaced to the public highway raising concerns regarding highway safety. The provision of parking and manoeuvring within the site is a key consideration and without the ability to guarantee its provision for the life of the dwelling, the principle of the proposal is not considered to be acceptable. Furthermore, by granting consent with the proposed access the Local Planning Authority would be knowingly encouraging occupiers/visitors of the site to commit an road traffic offence by driving a vehicle across a public Right of Way.
- 5.27 In this application the potential to provide an alternative new vehicular access off the Banbury Road has been ruled out due to the planning history and concerns regarding the potential impact on the Conservation Area, therefore vehicular access along The Pound would be the only viable option.
- 5.28 On the basis that the applicant has been unable to demonstrate that there is a lawful vehicular access to the proposed dwelling, your officers recommendation is that planning permission be refused.

Visual amenity and impact on heritage assets

- 5.29 In the consideration of the application at the 11th June Planning Committee Members resolved that the proposed development would not raise any design issues. There has been no material change in circumstances in terms of visual amenity and impact on heritage assets.

Neighbouring Amenity

- 5.30 In the consideration of the application at the 11th June Planning Committee Members resolved that the proposed development would not raise any amenity issues. There has been no material change in circumstances in terms of residential amenity.

Engagement

- 5.31 With regard to the duty set out in paragraphs 186 and 187 of the Framework, amendments have been sought during the application process and the applicant has been given sufficient time to provide the evidence requested by the Council. It is considered that the duty to be positive and proactive has been discharged through continual communication with the applicant.

6. Recommendation

Refusal for the following reason;

1. The Pound is a designated public Right of Way and crosses a second public Right of Way at the access point to the site and it has not been demonstrated that the applicant benefits from a lawful vehicular access to the site via The Pound. As such the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure)(England) Order 2015 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way to seek amendments to the application and through continual communication with the applicant.